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| 09/828,463 | 04/06/2001 | Louis D. Giacalone, JR. | 17996-14 US | 6921 |

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BUCHANAN INGERSOLL PC
(INCLUDING BURNS, DOANE, SWECKER & MATHIS)
POST OFFICE BOX 1404
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| EXAMINER | |
|---|---|
| PATEL, HARESH N | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2154 | |

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 09/828,463 | GIACALONE,, LOUIS D. | |
| | Examiner | Art Unit | |
| | Haresh Patel | 2154 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *06 April 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-45* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-45* is/are rejected.

7)☒ Claim(s) *1-45* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *06 April 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *8/4/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

1. Claims 1-45 are subject to examination.

### *Priority*

2. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-45 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 09/828257. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application teaches all the limitations as disclosed such that the interpretation of a system for scheduling the distribution and play of advertising is similar to scheduling the distribution of content utilizing a network comprising content is a database, generating schedule data by inputting preferences to a scheduling algorithm, distributing the content and the schedule data to a plurality of output devices utilizing the

network along with usage of visual display and audio/video broadcast. The claimed subject matter of claims 1-20 of copending Application No. 09/828257 does not specifically mention about accessing content in a database. However, it is well known in the art; for example, Wade, 2002/0019831 discloses the well-known concept of accessing content in a database (e.g., paragraph 70). With Wade's teachings it would be obvious to one of ordinary skill in the art to include the concept of accessing content in a database with the claimed subject matter of claims 1-20 of copending Application No. 09/828257.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Specification***

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The present title is not sufficient for proper classification of the claimed subject matter.

The following title is suggested: "Single scheduling algorithm containing five standard scheduling methods for media playback".

***Information Disclosure Statement***

4. An initialed and dated copy of Applicant's IDS form 1449, paper dated 8/4/2005 is attached to the instant Office action.

***Claim Objections***

5. Claims 1-45 is objected to because of the following informalities:

Claims 1, 16, 31, mention, "the group consisting of:", which should be --a group consisting of--.

Claims 2 – 15, mention, "A method as recited in claim", which should be, --The method as recited in claim--.

Claims 17-30, mention, "An apparatus as recited in claim", which should be, --The apparatus as recited in claim--.

Claims 32-45, mention, "A computer program as recited in claim", which should be, --The computer program embodied on the computer readable medium as recited in claim--.

Claim 40, mentions, "in claim ___", which should be, --in claim 32--.

Claim 45, mentions, "[communication", which should be, --communication--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

6. Claims 1-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 16 and 31 recite the limitations, "the distribution of content", "the content". There is insufficient antecedent basis for this limitation in the claim (Please see MPEP 706.03(d). Since, multiple "content" (i.e., content utilizing a network, content in a database) exist in the claim, it is not clear which "content" is referred by the limitations in the claim.

Claims 2, 7-11 13-15, 17, 22-26, 28-30, 32, 37-41, 43-45, recite the limitations, "the content". There is insufficient antecedent basis for this limitation in the claim (Please see MPEP 706.03(d). Since, multiple "content" (i.e., content utilizing a network, content in a database) exist in the claim, it is not clear which "content" is referred by the limitations in the claim.

Claims 3-6, 18-21, 33-36, recite the limitations, "the content communication". There is insufficient antecedent basis for this limitation in the claim (Please see MPEP 706.03(d).

Claims 7, 22, 37, recite the limitations, "the input frequency". There is insufficient antecedent basis for this limitation in the claim (Please see MPEP 706.03(d). Note: respective independent claims contain "frequency", and "selected from the group consisting of:", which clearly clarifies that the frequency may or may not exist.

Claims 8, 23, 38, recite the limitations, "the input interval". There is insufficient antecedent basis for this limitation in the claim (Please see MPEP 706.03(d). Note: respective independent claims contain "interval", and "selected from the group consisting of:", which clearly clarifies that the interval may or may not exist.

Claims 9, 24, 39, recite the limitations, "the input preference", "the beginning of the recurring period". There is insufficient antecedent basis for this limitation in the claim (Please see MPEP 706.03(d).

Claims 10, 25, 40, recite the limitations, "the input time of play preference". There is insufficient antecedent basis for this limitation in the claim (Please see MPEP 706.03(d). Note: respective independent claims contain "time of play", and "selected from the group consisting of:", which clearly clarifies that the time of play may or may not exist.

Claims 11, 26, 41, recite the limitations, "the trigger events preference", "the occurrence of an event". There is insufficient antecedent basis for this limitation in the claim (Please see MPEP 706.03(d). Note: respective independent claims contain "trigger events", and "selected from the group consisting of:", which clearly clarifies that the trigger events may or may not exist.

Claims 12, 27 and 42, recite the limitations, "the event". There is insufficient antecedent basis for this limitation in the claim (Please see MPEP 706.03(d). Since, multiple "event" (i.e., trigger events, an event external to the algorithm, an external event) exist in the claim, it is not clear which "event" is referred by the limitations in the claim.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1-6, 16-21 and 31-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone et al. 6,446,045 (Hereinafter Stone) in view of Debey, U.S. Publication, 2004/0064497 (Hereinafter Debey).

9. As per claims 1, 16 and 31, Stone teaches a method / an apparatus / a computer program embodied on a computer readable medium (e.g., col., 3, line 13 – col., 4, line 55) for scheduling the distribution of content to a plurality of output devices utilizing a network, comprising (e.g., scheduling of advertising/publishing content over the network, col., 3, line 13 – col., 4, line 55):

a code segment for accessing content in a database (e.g., usage of database, figure 2A, advertising content over the network, col., 3, line 13 – col., 4, line 55);

a code segment for generating schedule data by inputting preferences to a scheduling algorithm (e.g., usage of scheduling algorithms, col., 3, line 13 – col., 4, line 55), the scheduling algorithm being based on predetermined methods of processing input preferences (e.g., col., 3, line 13 – col., 4, line 55) relating to parameters (e.g., scheduling algorithms for handling advertisement/publishing related to a user, col., 3, line 13 – col., 4, line 55); and

a code segment for distributing the content (e.g., advertising content over the network, col., 3, line 13 – col., 4, line 55); and the schedule data to a plurality of output devices utilizing a network (e.g., distribution of real time dynamic content related to the scheduled advertisement/publishing information to the output devices, col., 3, line 13 – col., 4, line 55).

However, Stone does not specifically mention about parameters selected from the group consisting of frequency, interval, time of play, trigger events, and category filtering.

Debey discloses the well-known concept of parameters selected from the group consisting of frequency, interval, time of play, trigger events, and category filtering (e.g., paragraphs 44-46).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Stone with the teachings of Debey in order to facilitate of

parameters selected from the group consisting of frequency, interval, time of play, trigger events, and category filtering because the parameters would support presenting content information at the remote devices. The presented content information would be available for an audience to view. The parameters would help enhance presenting information to the audience at specific time.

10. As per claims 2, 17, 32, Stone and Debey disclose the claimed limitations as rejected above. Stone also teaches the following:

causing the output devices to communicate the content to an audience (e.g., col., 3, line 13 – col., 4, line 55).

11. As per claims 3, 6, 18, 21, 33, 36, Stone and Debey disclose the claimed limitations as rejected above. Stone also teaches the following:

the content communication is by way of a audio/visual display (e.g., col., 3, line 13 – col., 4, line 55).

12. As per claims 4, 5, 19, 20, 34, 35, Stone and Debey disclose the claimed limitations as rejected above. However, Stone does not specifically mention about broadcast.

Debey discloses the well-known concept of broadcast usage (e.g., paragraph 36).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Stone with the teachings of Debey in order to facilitate of

usage of broadcast because the broadcast would support providing content information at the remote devices. The provided content information would be available for an audience to view.

13. Claims 8, 9, 23, 24, 38, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone and Debey in view of Cannon, 2001/0020236 (Hereinafter Cannon).

14. As per claims 8, 23, 38, Stone and Debey disclose the claimed limitations as rejected above. However, Stone and Debey do not specifically mention about usage of recurring period associated with a play or particular content, assigning a recurring period to the schedule data and in response to the schedule data the output devices cause the content to be communicated at the beginning of the recurring period.

Cannon discloses the well-known concept of using recurring period associated with a play or particular content (e.g., paragraphs 500, 501, 579, 596), assigning a recurring period to the schedule data and in response to the schedule data the output devices cause the content to be communicated at the beginning of the recurring period (e.g., paragraphs 500, 501, 579, 596).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Stone with the teachings of Debey in order to facilitate of usage of the recurring period to the schedule data for communicating the content at the beginning of the recurring period because the scheduling information would support providing advertising content based on recurring period of the content that needs to be displayed. The content (advertisement information) would be provided to the devices on the network for user presentation at the beginning of the recurring period.

15. As per claims 9, 24, 39, Stone and Debey disclose the claimed limitations as rejected above. However, Stone and Debey do not specifically mention about usage of an offset which delays communication of the content following the beginning of the recurring period.

Cannon discloses the well-known concept of using an offset which delays communication of the content following the beginning of the recurring period (e.g., paragraphs 161, 206).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Stone with the teachings of Debey in order to facilitate of usage of an offset which delays communication of the content following the beginning of the recurring period because the scheduling information would support providing advertising content based on the offset that would help delay communicating content that needs to be displayed. The content (advertisement information) would be provided to the devices on the network after a delay for user presentation.

16. As per claims 10-12, 25-27, 40-42, Stone and Debey disclose the claimed limitations as rejected above. Stone also discloses usage of an asynchronous request as an external event to be recognized to the schedule data associated with the content (e.g., usage of on-demand functionality supporting external request, figure 4c). However, Stone and Debey do not specifically mention about usage of a time of day and assigning time of day to the schedule data associated with each content and in response to the schedule data, the output devices cause the content of to be communicated at the particular time of day.

Cannon discloses the well-known concept of using a time of day and assigning time of day to the schedule data associated with each content (e.g., paragraphs 161, 206, 500, 501, 579, 596) and in response to the schedule data, the output devices cause the content of to be communicated at the particular time of day (e.g., paragraphs 161, 206, 500, 501, 579, 596).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Stone with the teachings of Debey in order to facilitate of usage of time of day to the schedule data associated with each content and the output devices cause the content of to be communicated at the particular time of day because the scheduling information would support providing advertising content based on the time of day information that would help communicating content that needs to be displayed at a particular time. The content (advertisement information) would be provided to the devices on the network based on the information related to time of day to the schedule data.

17. Claims 7, 13-15, 22, 28-30, 37, 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stone and Debey in view of "Official Notice".

18. As per claims 7, 22, 37, Stone and Debey disclose the claimed limitations as rejected above. However, Stone and Debey do not specifically mention about usage of relative weight associated with each content, assigning a weight to the schedule data and in response to the schedule data the output devices communicate the content preferentially according to the assigned weight.

"Official Notice" is taken that both the concept and advantages of providing relative weight associated with each content, assigning a weight to the schedule data and in response to

the schedule data the output devices communicate the content preferentially according to the assigned weight is well known and expected in the art. For example, Hendricks et al., 2003/0145323 discloses these limitations (e.g., paragraphs 204, 266, 274, 461, 463-464), Cannon, 2001/0020236 also discloses these limitations (e.g., paragraphs 54, 302, 339, 363, 393, 404, 405, 449, 451, 460-463, 472, 497, 500, 501, 523, 596), Aggarwal et al., discloses these limitations (e.g., figure 9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include relative weight associated with each content, assigning a weight to the schedule data and in response to the schedule data the output devices communicate the content preferentially according to the assigned weight in order to facilitate usage of assigning a weight to the schedule data for communicating the content preferentially because the scheduling information would support providing advertising content based on weight of the content that needs to be displayed. The content (advertisement information) would be provided to the devices on the network for user presentation.

19. As per claims 13-15, 28-30, 43-45, Stone and Debey disclose the claimed limitations as rejected above. However, Stone and Debey do not specifically mention about usage of a tag indicating whether or not the content is available for communication to a particular audience in a specified venue during specified period of time.

"Official Notice" is taken that both the concept and advantages of providing a tag indicating whether or not the content is available for communication to a particular audience in a specified venue during specified period of time is well known and expected in the art. For

example, Hendricks et al., 2003/0145323 discloses these limitations (e.g., paragraphs 204, 266, 274, 461, 463 464), Cannon, 2001/0020236 discloses these limitations (e.g., paragraphs 54, 302, 339, 363, 393, 404, 405, 449, 451, 460-463, 472, 497, 500, 501, 523, 596), Aggarwal et al., discloses these limitations (e.g., figure 9), Wade, 2002/0019831 discloses these limitations (e.g., paragraph 70), Shaw et al., 2001/0005855 discloses these limitations (e.g., paragraph 146), Thompson, 5,881,245, discloses these limitations (e.g., col., 6, lines 11 – 33), Marsh et al., 6,876,974, discloses these limitations (e.g., figures 1, 5, 8); Ledbetter, 2002/0056121 discloses these limitations (e.g., paragraphs 8 and 18), Klosterman et al., 2002/0092017, discloses these limitations (e.g., paragraphs 38 and 48); Bezos et al., 2003/0055729, discloses these limitations (e.g., paragraphs 17, 40, 42); DiFranza et al., 2002/0112925, discloses these limitations (e.g., paragraphs, 44, 68); Klayh, 2003/0103644, discloses these limitations (e.g., paragraph 178, figures 1-3); Doherty 2003/0200128, discloses these limitations (e.g., paragraphs 52 and 57), Nishiyama et al., 2004/0172655 discloses these limitations (e.g., paragraphs 69, 204, 295, figures 2, 3, 6, 7, 9, 11-16); Flickinger 2005/0283796 discloses these limitations (e.g., abstract); Hankla, 2001/0032122, discloses these limitations (e.g., paragraph 25, figure 1), Cannon, 2001/0020236, discloses these limitations (e.g., paragraphs 40, 384, figure 4), Nishiyama et al., 6,725,460, discloses these limitations (e.g., figures 2, 3, 6, 7, 9, 11-16), Smith , 6,502,076, discloses these limitations (e.g., col., 2, line 51 – col., 3, line 34).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a tag indicating whether or not the content is available for communication to a particular audience in a specified venue during specified period of time in order to facilitate indicating content tagging for a particular audience requirement because the tag would support

providing content (advertising/play) based on the tag indication of when the content is available during the specified period of time. The content (advertisement information) would be provided during the content availability during the specified period of time to the devices on the network for user/audience presentation.

***Conclusion***

Examiner has cited particular columns and line numbers and/or paragraphs and/or sections and/or page numbers in the reference(s) as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety, as potentially teaching, all or part of the claimed invention, as well as the context of the passage, as taught by the prior art or disclosed by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Haresh Patel whose telephone number is (571) 272-3973. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 10:00 am to 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Haresh Patel

March 6, 2006

JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100